UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of PROVIDENCE PUBLIC LIBRARY Employer and UNITED SERVICE AND ALLIED WORKERS OF RHODE ISLAND Petitioner and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 134, AFL-CIO Intervenor	Case 1-RC-21664

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is located in Providence, Rhode Island, where it is engaged in the operation of a library. The Intervenor was certified to represent the maintenance employees of the Employer on December 8, 1978. The Petitioner here seeks to represent those maintenance employees. There are approximately 12 employees in the unit.

The parties agree on the appropriate unit, but the Intervenor asserts that there is a contract bar to the instant petition. I find that there is no contract bar to proceeding in this matter.

There has been a series of collective-bargaining agreements between the Intervenor and the Employer since certification. Historically, these contracts have been for a period of one year and have expired at the end of June of each year. Negotiations for successor contracts historically have begun about a month after the previous contract has expired because negotiations must wait until the Employer receives a budget from the State of Rhode Island in August. During this interim period, while waiting to begin negotiations, the terms of the recently expired contract have determined employee wages, hours, and working conditions.[1] There has never been a formal document executed by the Intervener and the Employer to extend their contracts. When a new agreement is eventually reached, it has historically been applied retroactively.

The most recent collective-bargaining agreement between the Employer and the Intervenor was effective for the period July 1, 2002 to June 30, 2003 (2002-2003 contract). The Employer never signed that contract, and it may not have ever been signed by the Intervenor. The Employer received no request to renegotiate a contract after the expiration of this agreement, and no bargaining sessions have been scheduled as of the date of the hearing. The petition in this case was filed on July 18, 2003.

In order for a collective-bargaining agreement to serve as a bar to an election, the Board's well-established contract-bar rules require that such agreement satisfy certain formal and substantive requirements. The agreement must be signed by all parties prior to the filing of the petition that it would bar, and it must contain substantial terms and provisions of employment sufficient to stabilize the parties' bargaining relationship.[2] Unless a contract is signed by all the parties prior to the filing of a petition, it does not bar the petition even though the parties may have put into effect some or all of the terms, or applied the terms retroactively.[3]

Under the contract bar rules, an agreement of indefinite duration or with no fixed term does not bar an election for any period.[4] An extension of an expired agreement, made pending the negotiation of a new agreement or the modification of an old agreement, is treated in the same manner, and therefore an extension agreement of indefinite duration cannot operate as a bar.[5] The burden of proving that a contract is a bar is on the party asserting the doctrine.[6]

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[1] During the period following the expiration of a contract and the execution of a new agreement, historically the Employer has also continued to honor union dues checkoffs and remit them to the union, the grievance machinery has remained in place, and the Intervener's no-strike pledge has been maintained.

[2] *De Paul Adult Care Communities*, 325 NLRB 681 (1998); *Appalachian Shale Products Co*., 121 NLRB 1160 (1958).

[3] *Appalachian Shale*, supra at 1162; *Hotel Employers Association of San Francisco*, 159 NLRB 143, 146 (1966).

[4] *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990 (1958).

[5] *Compton Company, Inc.*, 260 NLRB 417, 418 (1982); *Peabody Coal Company*, 197 NLRB 1231, 1232 fn. 9 (1972); *Frye & Smith, Ltd*., 151 NLRB 49, 50 (1965).

Here, there is no contract bar to the instant petition. As of the time of the petition, the 2002-2003 contract had expired. As of the date of the hearing, there was no written, signed extension agreement between the Intervenor and the Employer that could serve as a bar. Under the above rules, the oral maintenance of terms and conditions of employment of a prior agreement for an indefinite period does not serve as a bar. I also note that the 2002-2003 contract was never signed, and could not itself serve as a bar. It would be inconsistent to permit the continuance of the terms of that agreement to serve as a bar when the original agreement could not.

In its post-hearing brief, the Intervenor contends that the petition should be dismissed to encourage labor stability. The Intervenor essentially asserts that the unsigned 2002-2003 contract, the oral extension agreement, and then the retroactively applied new agreement collectively constitute one continuous bar without time limitations. I reject this contention. The objective of the Board's contract bar rules is to achieve a reasonable balance between industrial stability and employee freedom of choice. The Intervenor's construction would completely insulate the parties from a petition and negate employee freedom of choice.

Accordingly, based upon the foregoing, the stipulations of the parties, and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time maintenance department employees employed by the Employer at its Providence, Rhode Island locations, but excluding guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Service and Allied Workers of Rhode Island or by Service Employees International Union, Local 134, AFL-CIO, or neither.

LIST OF VOTERS

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[6] *Roosevelt Memorial Park*, 187 NLRB 517 (1970).

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc.;[7] NLRB v. Wyman-Gordon Co.[8] Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility.[9] In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before-August 20, 2003. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 27, 2003.

/s/ Rosemary Pye
Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street - Room 601
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 13th day of August, 2003.

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[7] 156 NLRB 1236 (1966).

[8] 394 U.S. 759 (1969).

[9] 315 NLRB 359 (1994).